



Sonoma County Water Agency Request for Statements of Qualifications

CF/0-0-21 RFQ (AGREE FOR AS-NEEDED COMPUTER,
PROGRAMMING, AND INTEGRATION SERVICES)
TW 12/13-155 (ID 4687)

Deadline for Submission

July 17, 2013

RE: REQUEST FOR STATEMENTS OF QUALIFICATIONS FOR AS-NEEDED SCADA SYSTEM SUPPORT AND RELATED SERVICES

I. Introduction

The Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District (collectively "Water Agency") invites statements of qualifications (SOQs) from consulting firms interested in providing support for Water Agency's Supervisory Control and Data Acquisition (SCADA) System for water and wastewater transmission and delivery equipment and related services.

Water Agency does not guarantee work to any qualified consultant.

II. Local Service Provider Preference

A 5% weighting will be provided in the total rating score for local firms. A Local Service Provider (local firm) is defined as a business or consultant who has a valid physical address located within Sonoma County from which the vendor or consultant operates or performs business on a day-to-day-basis, and holds a valid business license if required by a city within the jurisdiction of Sonoma County. A business shall affirm it qualifies as a local business on the enclosed Exhibit A Declaration of Local Business for Services.

III. Background

Water Agency requires support services for the maintenance, repair, design, programming, installation, and other related services of SCADA, Programmable Logic Controllers (PLC), Human Machine Interface (HMI), Variable Frequency Drivers (VFD), and controllers at its facilities. Sonoma County Water Agency owns and operates Airport/Larkfield/Wikiup Sanitation Zone, Geyserville Sanitation Zone, and Penngrove Sanitation Zone and also operates the Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District under contract with these entities

Water Agency currently uses the following equipment and protocols in SCADA System operations:

Equipment

PLC and VFD equipment from the following manufacturers: Allen Bradley, Modicon, General Electric, Control Microsystems, Siemens and Switzer.

Software

The HMI control software used by the Water Agency is a combination of National Instruments Lookout, Wonderware, and Cimplicity.

Radio and Network Communications

The communications media is a combination of 400MHz, spread spectrum 900MHz and Ethernet connectivity connecting 70 remote sites within an area of 180 miles with valleys and mountains.

Communication Protocols

Various communication protocols employed at the Water Agency include: Modbus Plus, Modbus RTU, Modbus Ascii, C-Bus, SMPX, DH Plus

Work under this As-Needed Agreement will include, but not be limited to, the following:

- Providing SCADA drawings, updates and designs, and field modifications including user manuals to facilitate operational changes to Water Agency equipment
- Maintenance, repair, modification, and upgrades to existing equipment
- Design review of capital improvement drawings and specifications and related construction projects
- Programming and design for new equipment
- Procedural documentation and training personnel on system changes and new equipment

IV. Minimum Qualifications

Experience with SCADA systems in water and waste water treatment and distribution systems.

Firms that do not meet the minimum qualifications will not have their SOQs evaluated under Section VI, Evaluation, below.

V. Submittal of SOQs

A draft agreement is enclosed. Please review the entire draft agreement carefully before submitting an SOQ. If any significant omissions or ambiguities in the draft agreement come to the Water Agency's attention while under review by interested firms, the Water Agency will make a uniform written response to all parties.

SOQs shall include the following:

1. A Table of Contents and page numbers.
2. Evidence of minimum qualifications.
3. Completed Declaration of Local Business for Services, if applicable.
4. A statement of similar work previously performed, including at least three references with name of organization, contact person, and telephone number.
5. A discussion of experience in the following areas:
 - Calibration, troubleshooting, repair, and programming for all system equipment
 - National Instruments Lookout SCADA and historical software by Wonderware
 - 450 and 900MHz data radios
 - Consulting on process system control and automation upgrades (including radio telemetry systems, variable frequency drives, motor control centers, chemical feeder systems, etc.)
6. A statement of qualifications and a list of personnel to be assigned to the work, including a resume for each, listing education, experience, and expertise in this type of work.
7. A staffing plan that includes estimated hours and personnel devoted to any particular portion or element of the work.

8. A breakdown of job classes and billing schedule (range).
9. A list of persons or firms to whom any phase of the work may be subcontracted, including a statement of their qualifications and experience.
10. Any proposed exceptions to the indemnification, insurance, or other terms of the draft agreement. Please make comments as specific as possible. If no exceptions are included in the SOQ the standard terms will be considered acceptable.

Interested firms must submit 2 hard copies of their SOQ by 5:00 pm, Wednesday, July 17, 2013. Mail to the attention of Eric Wilhelm, Sonoma County Water Agency, or hand deliver to 404 Aviation Boulevard, Santa Rosa, California 95403-9019.

VI. Evaluation

SOQs that do not include all of the information requested cannot be adequately evaluated. Evaluation will be based on:

1. Responsiveness to the work requirements (for example, understanding of local issues and regulations, site familiarity)
2. Professional qualifications and overall performance commitment
3. Demonstrated ability to perform the work in accordance with good practices common to the industry
4. Exceptions to agreement terms
5. Cost
6. Local Service Provider Preference

Final terms of the agreement and price will then be negotiated with the firm selected.

VII. Contacts

If you have any questions, please contact Eric Wilhelm at 707-524-1172 or Eric.Wilhelm@scwa.ca.gov.

Sincerely,

Pamela Jeane, P. E.
Assistant General Manager – Operations

Encs.

c: Eric Wilhelm
Jim Zambenini
Lisa Consani

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Exhibit A
DECLARATION OF LOCAL BUSINESS FOR SERVICES



COUNTY OF SONOMA

GENERAL SERVICES PURCHASING DIVISION

2300 COUNTY CENTER DRIVE, SUITE A208
SANTA ROSA, CALIFORNIA 95403
(707) 565-2433 Fax: (707) 565-6107

DECLARATION OF LOCAL BUSINESS FOR SERVICES

Sonoma County gives local businesses a preference in formal solicitations of services as set forth in the County of Sonoma Local Preference Policy for Services.

In order to qualify for this preference, a business must meet *all* of the following criteria:

1. For businesses with a location in a city within Sonoma County, a valid business license if required by the city; and
2. A valid physical address located within Sonoma County from which the vendor or consultant operates or performs business on a day-to-day basis.

By completing and signing this form, the undersigned states that, under penalty of perjury, the statements provided herein are true and correct and that the business meets the definition of a local business as set forth in the County of Sonoma Local Preference Policy for Goods.

All information submitted is subject to investigation as well as disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid not being considered for application of the County's local preference policy. False or dishonest responses will cause the rejection of the bid and curtail the declarant's ability to conduct business with the County in the future. It may also result in legal action.

1. Legal name of business: _____
2. Physical address of the principal place of business.

3. Business license issued by incorporated city within the County:

License Number _____ Issued by: _____

Authorized Signature: _____ Date: _____

Printed Name & Title: _____

"Working Today for Water Tomorrow"

The Sonoma County Water Agency's Integrated Management Policy for ISO 9001 and 14001 states that we are committed to always improving, achieving customer satisfaction, total regulatory compliance, environmental stewardship, and resource management.

SAMPLE Agreement for As-Needed SCADA System Support and Related Services

This agreement ("Agreement") is by and between **County Water Agency and Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District**, (collectively referred to as "Water Agency") and **Other Party: TBD**], type of entity* _____ ("Consultant"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Article 6 (Term of Agreement).

RECITALS

- A. Consultant If corp from a state outside CA, add: certifies that it is a _____ state corporation duly authorized to do business in the State of California, registered with the Secretary of State of California, and represents that it is a duly qualified and licensed _____ type of firm, experienced in supporting Supervisory Control and Data Acquisition (SCADA) Systems and related services.
- B. Sonoma County Water Agency owns and operates Airport/Larkfield/Wikiup Sanitation Zone, Geyserville Sanitation Zone, and Penngrove Sanitation Zone ("Zones").
- C. Sonoma County Water Agency operates the Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District ("Districts") under contract with Districts. References to District employees are understood to be Sonoma County Water Agency employees acting on behalf of the Districts.
- D. Water Agency owns and operates water transmission and wastewater systems in its service area.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. LIST OF EXHIBITS

- 2.1. The following exhibits are attached hereto and incorporated herein:
 - a. Exhibit A: Scope of Work
 - b. Exhibit B: Agreement Memorandum

- c. Exhibit C: Schedule of Costs
- d. Exhibit D: Insurance Requirements

3. **WATER AGENCY'S REQUEST FOR SERVICES**

- 3.1. *Initiation Conference:* The Water Agency's Agreement Administrator, Pam Jeane, will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email. During the Initiation Conference, the Project Manager and Consultant will establish and agree on the project information shown in Exhibit B.
- 3.2. *Agreement Memorandum:* Water Agency will prepare an Agreement Memorandum setting forth the terms for the subject project as established during the Initiation Conference. The Agreement Memorandum will be in the form as set forth in Exhibit B and will be executed by both parties prior to commencement of work.
- 3.3. *Amount of Work:* Water Agency does not guarantee a minimum or maximum amount of work.

4. **SCOPE OF SERVICES**

- 4.1. *Consultant's Specified Services:* Consultant shall perform the services listed in Exhibit A or as requested in the Agreement Memorandum, within the times or by the dates provided in the Agreement Memorandum and pursuant to Article 10 Prosecution of Work. Consultant shall provide all necessary manpower and equipment required to carry out the requested services in a professional and expeditious manner.
- 4.2. *Contact Information:*

Water Agency	Consultant
Agreement Administrator: Pam Jeane	Contact: _____
404 Aviation Boulevard	[TBD]
Santa Rosa, CA 95403-9019	_____
Phone: 707-521-1864	Phone: _____
Email: Pam.Jeane@scwa.ca.gov	Email: _____
	Remit payments to:
	Attn: Accounts Receivable / Same As Above

- 4.3. *Cooperation with Water Agency:* Consultant shall coordinate the work with the Project Manager named in the Agreement Memorandum.

4.4. *Performance Standard and Standard of Care:* Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Water Agency shall not operate as a waiver or release. Water Agency has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that its work will be performed and its operations conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement. If Water Agency determines that any of Consultant's work is not in accordance with such level of competency and standard of care, Water Agency, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with Water Agency to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7 (Termination); or (d) pursue any and all other remedies at law or in equity.

4.5. *Assigned Personnel:*

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time Water Agency, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from Water Agency.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Water Agency to be key personnel whose services were a material inducement to Water Agency to enter into this Agreement, and without whose services Water Agency would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Water Agency.
- c. Key personnel shall be as listed in the applicable Agreement Memorandum.
- d. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

5. PAYMENT

5.1. *Total Costs:* Total costs under this Agreement shall not exceed \$450,000.

5.2. *Method of Payment:* Consultant shall be paid in accordance with the following terms:

- a. Consultant shall be paid in accordance with the hourly rates set forth in Exhibit C. Any mark-up shall be included in billed hourly rates.
- 5.3. *Invoices:* Consultant shall submit its bills in arrears on a monthly basis, based on work completed for the period, in a form approved by Water Agency's Project Manager. The bills shall show or include:
- a. Consultant name
 - b. Name of Agreement
 - c. Water Agency's Order Number(s) and Account Number(s) as listed in the applicable Agreement Memorandum.
 - d. Task performed with an itemized description of services rendered by date
 - e. Time in quarter hours devoted to the task
 - f. Hourly rate or rates of the persons performing the task
 - g. Summary of work performed by subconsultants, as described in Paragraph 16.4

5.4. *Availability of Funding in Subsequent Fiscal Years:*

- a. Water Agency's performance under this Agreement in subsequent years is contingent upon appropriation of funds by Water Agency's Board of Directors. Water Agency shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by Water Agency's Board of Directors for the purpose of this Agreement. Amount of funding planned for appropriation for this Agreement is as follows:

<i>Fiscal Year</i>	<i>Planned Appropriation</i>
2013/2014	\$150,000
2014/2015	\$150,000
2015/2016	\$150,000
Total for 3 Years	\$450,000

- b. If funding for this Agreement for any fiscal year is reduced or eliminated by Water Agency's Board of Directors, Water Agency shall have the option to either terminate this Agreement in accordance with Article 7 (Termination) or offer an amendment to Consultant to reflect the reduced amount.

6. **TERM OF AGREEMENT**

- 6.1. This Agreement shall remain in effect until depletion of the not-to-exceed amount listed in paragraph 5.1, or until July 1, 2016, whichever occurs first, unless terminated earlier in accordance with the provisions of Article 7 (Termination).

7. **TERMINATION**

- 7.1. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, Water Agency shall have the right, in

its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

- 7.2. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Water Agency may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.
- 7.3. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to Water Agency all materials and work product subject to Paragraph 14.8 and shall submit to Water Agency an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 7.4. *Payment Upon Termination:* Upon termination of this Agreement by Water Agency, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; and further provided, however, that if Water Agency terminates the Agreement for cause pursuant to Paragraph 7.2, Water Agency shall deduct from such amounts the amount of damage, if any, sustained by Water Agency by virtue of the breach of the Agreement by Consultant.
- 7.5. *Termination for Non-Appropriation:* Water Agency may terminate this Agreement at any time, upon giving Consultant thirty (30) days written notice, for any of the following reasons:
- a. Water Agency has exhausted all funds legally available for payments to become due under this Agreement;
 - b. Funds which have been appropriated for purposes of this Agreement are withheld and are not made available to Water Agency;
 - c. No appropriation of funds for payments has been made for purposes of this Agreement in the budget for the next fiscal year; or
 - d. An appropriation of funds for the next fiscal year has been made for purposes of this Agreement, but prior to actual release, such appropriation has been withdrawn.
- 7.6. *Authority to Terminate:* Water Agency's right to terminate may be exercised by Water Agency's General Manager.

8. INDEMNIFICATION

- 8.1. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District, and to indemnify, hold harmless, and release Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District, their officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District based upon a claim relating to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Article 8 apply whether or not there is concurrent negligence on the part of Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District, but, to the extent required by law, excluding liability due to conduct of Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District. Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District shall have the right to select their legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

9. INSURANCE

- 9.1. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit D.

10. PROSECUTION OF WORK

- 10.1. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement

shall be extended by a number of days equal to the number of days Consultant has been delayed.

- 10.2. When work is requested of Consultant by Water Agency, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Agreement Memorandum(s).

11. EXTRA OR CHANGED WORK

- 11.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Water Agency's General Manager in a form approved by County Counsel. The parties expressly recognize that Water Agency personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of Water Agency.

12. SOFTWARE/COMPUTER APPLICATION PURCHASE ONLINE ACCESSIBILITY

- 12.1. *Accessibility:* Water Agency policy requires that all Water Agency websites and web-based applications must be accessible to staff members and members of the public with disabilities.
- 12.2. *Standards:*
- a. Consultant shall certify that all Electronic and Information Technology ("EIT") products, services, or other deliverables (collectively "EIT Deliverables") furnished hereunder that will be made available to members of the general public in connection with Water Agency's ordinary course of business, comply with the following accessibility standards:
 - i. Federal accessibility standards established by 36 C.F.R. Section 1194, pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)). These standards are viewable at <http://access-board.gov/sec508/standards.htm>; and
 - ii. County of Sonoma's (County's) Web Site Accessibility Policy is available online at <http://webstandards.sonoma-county.org>.
 - b. The foregoing standards shall collectively be referred to hereinafter as "Water Agency Accessibility Standards." For the purposes of this Agreement, the term "EIT" shall include Information Technology (as defined below) and

any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information including, but not limited to equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term "Information Technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

- 12.3. *Noncompliant EIT; Obligation to Cure:* If Water Agency, in its sole and absolute discretion, determines that any EIT Deliverable does not comply with Water Agency Accessibility Standards, Water Agency will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to Water Agency, repair or replace the non-compliant EIT Deliverables within such period of time as specified by Water Agency in writing. If the required repair or replacement is not completed within the time specified, Water Agency shall have the right to do any or all of the following, without prejudice to Water Agency's right to pursue any and all other remedies at law or in equity:
- a. Cancel any delivery or task order;
 - b. Terminate this Agreement pursuant to the provisions of Article 7 (Termination); and/or
 - c. In the case of custom EIT developed by Consultant for Water Agency, Water Agency may have any necessary changes or repairs performed by itself or by another contractor. In such event, contractor shall be liable for all expenses incurred by Water Agency in connection with such changes or repairs.
- 12.4. *Upgrades Upon Renewal or Extension:* Notwithstanding the foregoing, Water Agency may accept EIT Deliverables that are not strictly compliant with Water Agency Accessibility Standards if Water Agency, in its sole and absolute discretion, determines that acceptance of such products or services is in Water Agency's best interest. For every EIT Deliverable accepted by Water Agency that does not fully comply with Water Agency Accessibility Standards, Consultant shall, at the discretion of Water Agency, make every effort to replace or upgrade it with a compliant equivalent product or service, if commercially available and cost neutral, upon the renewal or extension date of this Agreement.
- 12.5. *Warranty; Indemnity:* Consultant represents and warrants (i) that its EIT Deliverables will be accessible to the full extent required hereunder and (ii) that it shall defend, indemnify and hold Water Agency harmless from and against any and all claims and expenses, including attorneys' fees and litigation expenses, that may be incurred by or asserted against Water Agency, their officers, agents, or employees arising out of or related to Consultant's breach of this Article 12.

13. CONTENT ONLINE ACCESSIBILITY

- 13.1. *Accessibility:* Water Agency policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- 13.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a Water Agency/County-managed or Water Agency/County-funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. Section 1194, pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), and Water Agency's Web Site Accessibility Policy located at <http://webstandards.sonoma-county.org>.
- 13.3. *Certification:* With each final receivable intended for public distribution (report, presentations posted to the Internet, public outreach materials), Consultant shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g. Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- 13.4. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with Water Agency staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 13.5. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with Water Agency's Web Site Accessibility Policy shall be the responsibility of Consultant. If Water Agency, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Water Agency/County-managed or Water Agency/County-funded Web site does not comply with Water Agency Accessibility Standards, Water Agency will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to Water Agency, repair or replace the non-compliant materials within such period of time as specified by Water Agency in writing. If the required repair or replacement is not completed within the time specified, Water Agency shall have the right to do any or all of the following, without prejudice to Water Agency's right to pursue any and all other remedies at law or in equity:
 - a. Cancel any delivery or task order
 - b. Terminate this Agreement pursuant to the provisions of Article 7 (Termination); and/or
 - c. In the case of custom Electronic and Information Technology (EIT) developed by Consultant for Water Agency, Water Agency may have any necessary changes or repairs performed by itself or by another contractor. In such

event, Consultant shall be liable for all expenses incurred by Water Agency in connection with such changes or repairs.

- 13.6. *Water Agency's Rights Reserved:* Notwithstanding the foregoing, Water Agency may accept deliverables that are not strictly compliant with Water Agency Accessibility Standards if Water Agency, in its sole and absolute discretion, determines that acceptance of such products or services is in Water Agency's best interest.

14. REPRESENTATIONS OF CONSULTANT

- 14.1. *Status of Consultant:* The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Water Agency and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Water Agency provides its employees. In the event Water Agency exercises its right to terminate this Agreement pursuant to Article 7 (Termination), Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 14.2. *Communication with Water Agency's Contractor:* All communication shall be between Consultant and Water Agency. Consultant shall have no authority to act on behalf of Water Agency, to stop work, to interpret conditions of the construction contract, or to give direction to Water Agency's contractor.
- 14.3. *Taxes:* Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold Water Agency harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case Water Agency is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish Water Agency with proof of payment of taxes on these earnings.
- 14.4. *Records Maintenance:* Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Water Agency for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.
- 14.5. *Conflict of Interest:* Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any

manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by Water Agency, Consultant shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with Water Agency within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.

- 14.6. *Nondiscrimination:* Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 14.7. *Assignment of Rights:* Consultant assigns to Water Agency all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Water Agency in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Water Agency may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Water Agency. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Water Agency.
- 14.8. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Water Agency. Water Agency shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to Water Agency all such documents, which have not already been provided to Water Agency in such form or format as Water Agency deems appropriate. Such documents shall be and will remain the property of Water Agency without restriction or limitation. Consultant may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Water Agency.

- 14.9. *Nondisclosure of Confidential Information:* While doing the work required by this Agreement, Consultant may have access to technical information and materials pertaining to Water Agency's IT Network Design, including but not limited to information regarding Water Agency's IP addressing, file structures, user groups, wireless access points, business network, SCADA network, make/model of network equipment, security information, and network software ("Confidential Information"). The Confidential Information may include confidential or proprietary information or trade secrets exempt from disclosure under provisions of the California Public Records Act. In consideration of disclosure by Water Agency of Confidential Information to Consultant, Consultant and its agents shall hold any material or information designated by Water Agency as Confidential in strict confidence and shall not disclose it or otherwise make it available, in any form or matter whatsoever, to any person or entity without the prior written consent of Water Agency, except as may be ordered by a court of law. Immediately upon receipt of any request or demand for disclosure of any Confidential Information within the scope of this Agreement, Consultant shall give Water Agency written notice and a copy of the request and the time period, if any, within which Consultant is required to respond to the request. Upon termination of this Agreement, Consultant shall return Confidential Information in its possession, including copies, to Water Agency. Consultant's obligation to maintain material and information designated as Confidential in strict confidence shall survive completion of work under this Agreement and termination of this Agreement and, as provided for in Paragraph 14.8, Consultant agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Water Agency.
- 14.10. *Zone Liability:* Work under this Agreement that is performed on behalf of the residents of the Zones shall be paid exclusively from Zone funds. Consultant agrees that Consultant shall make no claim for compensation for Consultant's services against other funds available to Water Agency and Consultant expressly waives any right to be compensated from other funds available to Water Agency. In addition, Consultant acknowledges that West's Annotated California Codes Water Code Appendix Chapter 53-8 provides that certain judgments or claims against Water Agency based on causes of action arising from Zone activities may be made only from funds of that Zone.
- 14.11. *District Liability:* Districts are separate legal entities from Sonoma County Water Agency, operated under contract by Sonoma County Water Agency. To the extent any work under this Agreement relates to District activities, Consultant shall be paid exclusively from District funds. Consultant agrees that it shall make no claim for compensation for Consultant's services against Sonoma County Water Agency funds and expressly waives any right to be compensated from other funds available to Sonoma County Water Agency.

15. DEMAND FOR ASSURANCE

15.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 15 limits Water Agency's right to terminate this Agreement pursuant to Article 7 (Termination).

16. ASSIGNMENT AND DELEGATION

- 16.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 16.2. *Subcontracts:* Notwithstanding the foregoing, Consultant may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement.
- 16.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 16.2 will be utilized, Consultant may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 16.3. The following provisions apply to any subcontract entered into by Consultant other than those listed in Paragraph 16.2 above:
- a. Prior to entering into any contract with subconsultant, Consultant shall obtain Water Agency approval of subconsultant. Water Agency's Board of Directors must approve the selection of any subconsultant if the amount payable to subconsultant under the agreement exceeds \$25,000. In connection with such approval, Consultant shall provide Water Agency with copies of the responses to Consultant's Request for Proposals (RFP) to subconsultants, the names of key personnel who will be performing work under the agreement, and an explanation of Consultant's reasons for

choosing the recommended subconsultant based upon the criteria in the RFP.

- b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Water Agency in substantially the same form as that contained in Section 8, (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.

16.4. *Summary of Subconsultants' Work:* No less than quarterly, Consultant shall provide Water Agency with a summary of all work performed by all subconsultants during the preceding three months. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

17. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS

17.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as specified in Paragraph 4.2.

17.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 18.

18. MISCELLANEOUS PROVISIONS

18.1. *No Bottled Water:* In accordance with Water Agency Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Water Agency funding shall be used to purchase single-serving, disposable water bottles for use in Water Agency facilities or at Water Agency-sponsored events. This restriction shall not apply when potable water is not available.

18.2. *No Waiver of Breach:* The waiver by Water Agency of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.

- 18.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and Water Agency acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and Water Agency acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 18.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 18.5. *No Third-Party Beneficiaries:* Except as provided in Article 8 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 18.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the city of Santa Rosa, in the County of Sonoma.
- 18.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 18.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 18.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 18.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to substance:

By: _____
Water Agency General Manager

Reviewed as to funds:

By: _____
Water Agency Division Manager -
Administrative Services

Reviewed as to form:

By: _____
County Counsel

[Other Party: TBD], a [type of entity]

By: _____

(Please print name here)

Title: _____

Date: _____

Insurance Documentation is on file with Water
Agency

(Date)

**Sonoma County Water Agency, Occidental
County Sanitation District, and Russian River
County Sanitation District**

By: _____
Chair, Boards of Directors

Date: _____

Sonoma Valley County Sanitation District

By: _____
Chair, Board of Directors

Date: _____

Attest:

By: _____
Clerk of the Board

SAMPLE

Exhibit A

Scope of Work

[TBD]

SAMPLE

Exhibit B

Agreement Memorandum

Consultant shall perform the services as outlined in Exhibit A of the Agreement and as modified below, if applicable, within the times or by the dates provided for herein:

- A. Date of Initiation Conference: _____
- B. Project Manager Name: _____
- C. Project Manager Phone: _____
- D. Project Manager E-mail: _____
- E. Project Name: _____
- F. Project Location: _____
- G. Order number: _____
- H. Account number: _____
- I. Schedule for receipt of deliverables:
 Draft Report Due: _____
 Final Report Due: _____
- J. Not-to-exceed amount for this Agreement Memorandum: _____
- K. List of key personnel or authorized subcontractors, if applicable: _____
- L. Modifications to Article 4 (Scope of Services) or additional requirements (or attach additional sheet): _____

Other Party: TBD]

- ☐ **Sonoma County Water Agency**
- ☐ ---Choose one--- **County Sanitation District**

By: _____

Reviewed by Project Manager:

Title: _____

Name

Date: _____

By: _____

Pam Jeane, Agreement Administrator

C: SCWA Accounting

Date: _____

SAMPLE

Exhibit C

Schedule of Costs

[TBD]

SAMPLE

Exhibit D

Insurance Requirements

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

Water Agency reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. INSURANCE

1.1. Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance
- e. If Consultant currently has no employees, Consultant agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

1.2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, Water Agency requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Water Agency. Consultant is responsible for any deductible or self-insured retention and shall fund it upon Water

Agency's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the Water Agency.

- d. Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District, their officers, agents, and employees, shall be additional insured(s) for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between Water Agency and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
 - ii. Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limits: \$1,000,000 combined single limit per accident.
- b. Insurance shall apply to all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall apply to hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

1.4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Water Agency.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement

insurance with a retroactive date no later than the commencement of the work under this Agreement.

- e. Required Evidence of Insurance: Certificate of Insurance.

1.5. Standards for Insurance Companies

- a. Insurers shall have an A.M. Best's rating of at least A:VII.

1.6. Documentation

- a. The Certificate of Insurance must include the following reference: TW 12/13-155.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with Water Agency for the entire term of this Agreement and any additional periods if specified in Sections 1.1, 1.2, 1.3, or 1.4 above.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Sonoma County Water Agency and Occidental County Sanitation District, Russian River County Sanitation District, and Sonoma Valley County Sanitation District, their officers, agents, and employees, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.7. Policy Obligations

- a. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.8. Material Breach

- a. If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Water Agency, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, Water Agency may purchase the required insurance, and without further notice to Consultant, Water Agency may deduct from sums due to Consultant any premium costs advanced by Water Agency for such insurance. These remedies shall be in addition to any other remedies available to Water Agency.